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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,769	07/01/2003	Dimitri Peter Zafiroglu	SWZ-007	2175

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,769

Applicant(s)

ZAFIROGLU, DIMITRI PETER

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 56-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 56-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/10/2005 has been entered.
2. Claims 1-34 and 56-59 remain active. The amended claims set forth in the Amendment dated 10/12/2005 have been entered into the Record and contain no new matter. The previously applied rejections of claims 6, 7, 22, 30 and 32 under 35 U.S.C. § 112, second paragraph have been withdrawn due to amendment and explanation by Applicant.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 16-21, 23 and 56-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Keith et al. (US 2003/0232171) as substantially set forth in the Office Action dated 9/14/2005.
4. Claims 1, 3-5, 21, 23, 26, 27, 29, 31 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Neveu (US 4,645,699). Neveu teaches a pile cleaning material comprising a

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nonwoven web of fibers having ends and or loops protruding from one face and obtained by needle-punching a web of fibers (Abstract and Fig. 4). In Figure 4 layer **12** may be a latex binder or a thermoplastic film, which may be fixed to the layer **13** (col. 4, lines 30-35).

Examiner equates to the instantly claimed fibrous face layer. As shown in Figure 4 the plurality of legs **14** are dependent from the fibrous face layer **13** and punched through the nonwoven layer into the adhesive layer **12**. The cleaning material may also be attached to a backing layer **10** (Fig. 4). Claim 3 is rejected as the nonwoven web layer may have a basis weight ranging from 300 and 1000 g/m² (col. 2, lines 9-12).

Claim Rejections - 35 USC § 103

5. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) as applied to claim 5 above, and further in view of Matsunaga et al. (US 2003/0152743) as substantially set for in the Office Action dated 9/14/2005.

6. Claims 8-10 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) as applied to claim 1 above, and further in view of Murphy et al. (US 5,763,040) and Murata et al. (US 4,576,840) as substantially set forth in the Office Action dated 9/14/2005.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) in view of Murphy et al. (US 5,763,040) and Murata et al. (US 4,576,840) as applied above to claim 10 and in further view of Gillyns et al. (US 5,283,097) as substantially set forth in the Office Action dated 9/14/2005.

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8. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) as applied above to claim 1 in further view of Gillyns et al. (US 5,283,097) as substantially set forth in the Office Action dated 9/14/2005.

9. Claims 26-29, 31-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) in view of Ladeur et al. (EP 0547533) as set forth in the Office Action dated 9/14/2005.

10. Claims 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) in view of Ladeur et al. (EP 0547533) as applied to claim 26 above and in further view of Murphy et al. (US 5,763,040) as substantially set forth in the Office Action dated 9/14/2005.

11. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) in view of Murphy et al. (US 5,763,040) and further in view of Zafiroglu (US 5,075,142) as substantially set forth in the Office Action dated 9/14/2005.

12. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. (US 2003/023171) in view of Zafiroglu (US 5,075,142) as substantially set forth in the Office Action dated 9/14/2005.

Double Patenting

13. Claims 1-34 and 56-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 and 38-62 of copending Application No. 10/611,470 in view of Keith et al. (US 2003/023171) as substantially set forth in the Office Action dated 9/14/2005. The rejection is provided in this Office Action to further clarify its application.

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14. Both applications recite a fibrous face layer with elevated and depressed areas with the depressed areas adhesively attached to the rest of the composite, however application 10/611,470 requires the fibrous outer layer comprise a fabric. Keith et al. teach a floor covering comprising a nonwoven primary base and a plurality of pile forming yarns projecting from one side. The incorporation of the pile forming yarns and the nonwoven primary base constitutes a fabric comprising a plurality of legs dependent from the fibrous face layer, or a pile fabric. Since both the applied application 10/611,470 and Keith et al. are from the same field of endeavor (i.e. fabric facings/carpet), the purpose disclosed by Keith et al. would have been recognized in the pertinent art of the 10/611,470 application. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the article of '470 with pile fabric of Keith et al. with the motivation of creating an article with the pile facing and the stability of the nonwoven fabric substrate.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

15. Applicant's arguments filed 10/12/2005 have been fully considered but they are not persuasive.

16. Applicant argues that layer 22 of Keith et al. (US 2003/023171) is located below top layer 20 of the carpet and is, therefore, not a "fibrous face layer" as instantly claimed. As such the Keith reference cannot anticipate Applicant's claims. Examiner agrees with Applicant that the nonwoven layer 22 is below layer 20 of the carpet, however between the loops of 20 areas of 22 would serve as the most outwardly exposed surface of the applied article and as such it would form "at least a portion of a top surface of the composite" as instantly claimed by Applicant.

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Examiner has reviewed Applicant's drawings for a better understanding of the language of the instant claims and asserts that the applied art anticipates claims 1-5, 16-21, 23 and 56-57. In further argumentation Examiner suggests Applicant include a discussion of the instant claims as they relate to the supplied drawings to clear up any confusion as to how the instantly claimed article is different than that of that of the applied art.

17. Applicant objects to a supposed inconsistent use of the term "fibrous face layer".

Examiner has interpreted each reference separately and will provide an explanation for each interpretation. Examiner has remained consistent with the term "fibrous face layer" within each rejection as such has not created ^{an inconsistency} ~~a consistency~~ in his rejection or argumentation of said rejection.

18. Applicant argues that Examiner has used the Specification of Application 10/611,470 in the rejection of the instant application under obvious-type double patenting and that the '470 application is not available as prior art. Examiner agree that '470 application is not available as prior art and has made rejections to that effect. Examiner has drawn no support for the obvious-type double patenting rejection from the specification of 10/611,470. Examiner equates the two claimed adhesive layers to one another and fibrous outer layer of '470 to the instantly claimed fibrous face layer. The fibrous outer layer of '470 is made of fibers that are anchored in the adhesive layer, which is also instantly claimed. The additional limitations set forth in the '470 application such as the "depressed" and "elevated" areas do not limit the '470 article in a manner that distinguishes it over the instantly claimed article. The "elevated" areas may serve as the plurality of legs dependent from the fibrous outer layer and the "depressed" area serves as bottom surface of the fibrous outer layer.

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19. Applicant argues that Keith et al. does not anticipate or render of the amended claims of the instant invention obvious and as such may not be used in combination with the '470 application for an obvious-type double rejection. The arguments against the use of Keith et al. have been addressed supra.

20. The applied obvious-type double patenting rejection has been and is being made with the combination of the claims of application 10/611,470 and Keith et al. (US 2003/0232171).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm



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